



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 161017970-6970-01]

RIN 0648-XE976

Fisheries of the Northeastern United States; Summer Flounder Fishery; 2017 and 2018

Summer Flounder Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes revised summer flounder specifications for the 2017 and 2018 fishing years. Updated scientific information regarding the status of the summer flounder stock indicates that these proposed catch limits are necessary to constrain summer flounder harvest within scientifically sound recommendations to prevent overfishing. This action is intended to inform the public of proposed reductions for the 2017 and 2018 summer flounder fishing years.

DATES: Comments must be received on or before *[INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: A supplemental environmental assessment (SEA) was prepared for the specifications and describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Specifications Document, including the SEA, the Initial Regulatory Flexibility Analysis (IRFA), and the original environmental assessment for the 2016-2018 summer flounder, scup, and black sea bass specifications are available on request from Dr. Christopher M. Moore, Executive

Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

You may submit comments on this document, identified by NOAA-NMFS-2016-0138, by either of the following methods:

ELECTRONIC SUBMISSION: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0138,
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

- OR -

MAIL: Submit written comments to John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01950. Mark the outside of the envelope, “Comments on the Proposed Rule for Summer Flounder Specifications.”

INSTRUCTIONS: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

SUPPLEMENTARY INFORMATION:

Background and Proposed Specifications

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations outline the Council's process for establishing specifications. Specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), and sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit). Annual specifications may be established for three year periods, and, in interim years, specifications are reviewed by the Council to ensure previously established multi-year specifications remain appropriate. The FMP also contains formulas to divide the specification catch limits into commercial and recreational fishery allocations, state-by-state quotas, and quota periods, depending on the species in question. Rulemaking for measures used to manage the recreational fisheries (minimum fish sizes, open seasons, and bag limits) for these three species occurs separately, and typically takes place in the spring of each year.

On December 28, 2015, NMFS published a final rule implementing the Council's recommended specifications for the summer flounder, scup, and black sea bass fisheries (80 FR 80689) for fishing years 2016 through 2018. The Council intended to reconsider the specifications set for fishing years 2017 and 2018 after reviewing any updated information. Based on updated information on the status of the summer flounder stock, the Council is now recommending adjustments to the previously established summer flounder specifications for the 2017 and 2018 fishing years. An assessment update will be available next summer and notice will be provided in the **Federal Register** on whether the revised 2018 specifications will remain

in place or be updated further based on any new information. The scup and black sea bass specifications implemented through previous rulemaking remain unchanged by this action.

When the Council previously recommended summer flounder specifications in 2015, available scientific information indicated that the summer flounder stock size was declining and that overfishing occurred in 2014. In order to minimize disruption to the industry as much as possible, given the necessary reduction in available catch to prevent further overfishing and to increase the stock size, the Council requested its Scientific and Statistical Committee (SSC) to deviate from the standard risk policy and to phase-in the summer flounder catch reductions over the 3-year specifications cycle. The SSC complied with this request, but requested a stock assessment update in July 2016 to determine if its recommended acceptable biological catches (ABCs) remain appropriate for 2017 and 2018.

The SSC met on July 21-22, 2016, to review the stock assessment update for summer flounder compiled by the Northeast Fisheries Science Center. This 2016 update was based on the peer-review approved model from the 2013 benchmark assessment, updated to include data through 2015. More specific information about the assessment information (e.g., biomass level, fishing mortality, etc.) can be found in section 6.0 of the SEA for this action. The assessment update noted that the consistent pattern in both underestimation of fishing mortality and overestimation of spawning stock biomass is continuing, even though catches have not substantially exceeded ABC levels. This downward trend in biomass is mainly due to below average recruitment in the last five years. As a result of this information, the assessment update recalculated the 2017 and 2018 overfishing limits (OFLs) for the stock. For 2017, the recalculated OFL is 16.76 million lb (7,600 mt) and for 2018, the recalculated OFL is 18.69 million lb (8,476 mt), representing approximately a 16-percent reduction from the previously

established OFLs. To keep catch below these updated OFL estimates, the SSC recommended revisions to the previously adopted 2017 and 2018 ABCs. The SSC recommended revising the ABCs by abandoning the phased-in approach and instead following the Council's standard risk policy. The SSC cited among its reasons for departing from the previously approved phased-in approach the continual overestimation of biomass and recruitment and underestimation of fishing mortality, emphasizing that continuing to overfish in a period of consistently poor recruitment represents a substantial risk to the stock. The SSC recommended a revised 2017 ABC that is approximately 30 percent lower than both the previously established 2017 ABC and the current 2016 ABC. The SSC recommended a 2018 ABC that is 16 percent lower than the previously established 2018 ABC (Table 1).

The Council's Summer Flounder Monitoring Committee met July 25, 2016, to discuss specification-related recommendations for the summer flounder fishery, to recommend offsets from the ACL to account for management uncertainty, and to discuss commercial management measure recommendations, as appropriate. The Monitoring Committee determined that no additional reductions were necessary to account for management uncertainty because the recreational fishery has had only minor overages of the recreational harvest limit in recent years, and the commercial landings monitoring and fishery closure system is timely enough to prevent commercial overages. As a result, the Monitoring Committee recommended that ACTs for the commercial and recreational sectors should equal their respective ACLs and made no recommended changes to any other summer flounder management measures.

Following the SSC and Monitoring Committee meetings, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board met jointly on August 9, 2016, to consider the recommendations of the SSC, the Monitoring Committee, and

public comments, and to make their specification recommendations. More complete details on the SSC, Monitoring Committee, and Council meeting deliberations can be found on the Council's website (www.mafmc.org). Ultimately, the Council recommended the summer flounder commercial quotas and recreational harvest limits shown in Table 1. The recommended catch limits for 2017 are nearly 30 percent lower than those previously established.

Table 1. Comparison of Recommended Measures to Previously Established Catch and Landing Limits of Summer Flounder.

		2016	2017			2018		
			<i>Current</i>	<i>Proposed</i>	<i>Difference</i>	<i>Current</i>	<i>Proposed</i>	<i>Difference</i>
Acceptable Biological Catch	million lb	16.26	15.86	11.30	-29%	15.68	13.23	-16%
	Mt	7,374	7,193	5,125		7,111	5,999	
Commercial Quota	million lb	8.12	7.91	5.66	-28%	7.89	6.63	-16%
	Mt	3,685	3,590	2,567		3,581	3,006	
Recreational Harvest Limit	million lb	5.42	5.28	3.77	-29%	5.26	4.42	-16%
	Mt	2,457	2,393	1,711		2,387	2,004	

While the Board action was finalized at the August meeting, the Council's recommendations must be reviewed by NMFS to ensure that they comply with the FMP and applicable law. NMFS also must conduct notice-and-comment rulemaking to propose and implement the final specifications.

Proposed 2017 and 2018 Summer Flounder Specifications

Table 2 summarizes the Council's recommended summer flounder specifications that NMFS is proposing for 2017 and 2018, including the sector-specific estimated discards.

Table 2. Proposed 2017-2018 Summer Flounder Specifications.

	2016 (current)		2017		2018	
	million lb	mt	million lb	mt	million lb	mt
OFL	18.06	8,194	16.76	7,600	18.69	8,476

ABC	16.26	7,375	11.30	5,125	13.23	5,999
ABC Landings Portion	13.54	6,142	9.43	4,278	11.05	5,010
ABC Discards Portion	2.72	1,233	1.87	847	2.18	989
Commercial ACL	9.43	4,275	6.57	2,982	7.70	3,491
Commercial ACT	9.43	4,275	6.57	2,982	7.70	3,491
Projected Commercial Discards	1.30	590	0.92	415	1.07	485
Commercial Quota	8.12	3,685	5.66	2,567	6.63	3,006
Recreational ACL	6.84	3,100	4.72	2,143	5.53	2,508
Recreational ACT	6.84	3,100	4.72	2,143	5.53	2,508
Projected Recreational Discards	1.42	643	0.95	432	1.11	504
Recreational Harvest Limit	5.42	2,457	3.77	1,711	4.42	2,004

Consistent with the summer flounder regulations, the sum of the recreational and commercial sector ACLs is equal to the ABC for each fishing year. To derive the ACLs, the sum of the sector-specific projected discards are removed from the ABCs to derive the landing allowances. For summer flounder, 60 percent of the landing allowance for each fishing year is allocated to the commercial fishery and 40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABCs by the allocation percentages to derive the sector ACLs. Although the derived ACLs are not split exactly according to the allocations specified in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), the landing portions of the ACLs preserve the appropriate allocation split, consistent with the FMP.

Table 3 presents the proposed state summer flounder allocations for 2017-2018 using the commercial state quota allocations described in the FMP. Any commercial quota adjustments to account for overages will be published in the **Federal Register** prior to the start of the respective fishing year. The final rule for this action will include any necessary quota overage reductions for fishing year 2017.

Table 3. 2017-2018 Proposed Initial Summer Flounder State Commercial Quotas.

	FMP Percent Share	2017 Initial Quota		2018 Initial Quota	
State		Lb	Kg	lb	kg
ME	0.04756	2,692	1,221	3,152	1,430
NH	0.00046	26	18	30	14
MA	6.82046	385,988	175,081	451,998	205,023
RI	15.68298	887,542	402,582	1,039,326	471,430
CT	2.25708	127,734	57,939	149,579	67,848
NY	7.64699	432,764	196,298	506,773	229,868
NJ	16.72499	946,512	429,331	1,108,381	502,753
DE	0.01779	1,007	457	1,179	535
MD	2.0391	115,398	52,344	135,133	61,295
VA	21.31676	1,206,372	547,201	1,412,682	640,782
NC	27.44584	1,553,233	704,535	1,818,862	825,022
Total	100	5,659,266	2,567,000	6,627,096	3,006,000

Note: Kilograms are as converted from pounds and do not sum to the converted total due to rounding. Rounding of quotas results in totals slightly exceeding 100 percent.

The Council and Commission will develop recreational management measures (e.g., minimum fish sizes, open seasons, and bag limits) for summer flounder this fall and NMFS rulemaking will occur in early spring of 2017.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared by the Council, as required by section 603 of the Regulatory Flexibility Act (RFA), to examine the impacts of these proposed specifications on small business

entities, if adopted. A description of the specifications, why they are being considered, and the legal basis for proposing and implementing specifications for the summer flounder fishery are contained in the preamble to this proposed rule. A copy of the detailed RFA analysis is available from NMFS or the Council (see **ADDRESSES**). The Council's analysis made use of quantitative approaches when possible. Where quantitative data on revenues or other business-related metrics that would provide insight to potential impacts were not available to inform the analyses, qualitative analyses were conducted. A summary of the 2017 and 2018 summer flounder specifications RFA analysis follows.

Description of the Reasons Why Action by the Agency is Being Considered, and a Statement of the Objectives of, and Legal Basis for, this Proposed Rule

This action proposes management measures, including annual catch limits, for the summer flounder fishery in order to prevent overfishing and achieve optimum yield in the fishery. A complete description of the action, why it is being considered, and the legal basis for this action are contained in the specifications document, and elsewhere in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to which the Proposed Rule Would Apply

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry and \$7 million in annual gross receipts for all businesses primarily engaged in for-hire fishing activity (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying

business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

This proposed rule affects commercial and recreational fish harvesting entities engaged in the summer flounder fishery. Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those impacted by the proposed action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

Ownership entities are defined as those entities with common ownership personnel as listed on the permit application. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ownership entity for the purpose of this analysis.

The current ownership data set used for this analysis is based on calendar year 2015 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2013 through 2015.

A description of the specific permits that are likely to be impacted by this action is provided below, along with a discussion of the impacted businesses, which can include multiple vessels and/or permit types.

According to the commercial ownership database, 553 affiliate firms landed summer flounder during the 2013-2015 period, with 547 of those businesses affiliates categorized as small businesses and 6 categorized as large businesses. The ownership data for the for-hire fleet indicate that there were 411 for-hire affiliate firms generating revenues from fishing recreationally for various species during the 2013-2015 period, all of which are categorized as small businesses. Although it is not possible to derive what proportion of the overall revenues came from specific fishing activities, given the popularity of summer flounder as a recreational species, it is likely that revenues generated from summer flounder recreational fishing is important for some, if not all, of these firms.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This action proposes to set commercial quotas and recreational harvest limits for the summer flounder fishery for the 2017 and 2018 fishing years that are consistent with the best scientific information available and the most recent catch limit recommendations of the Council's SSC. The proposed landings limits for 2017 include a commercial quota of 5.66

million lb (2,567 mt) and a recreational harvest limit of 3.77 million lb (1,711 mt). For 2018, the proposed measures include a commercial quota of 6.63 million lb (3,006 mt) and a recreational harvest limit of 4.42 million lb (2,004 mt).

The only other alternatives considered in this document are status quo alternatives that are identical to the summer flounder landings limits implemented in December 2015. If these specifications remained in place, they would have greater positive socioeconomic impacts than the preferred alternatives. However, these alternatives were not selected as preferred given that they do not address the new scientific information regarding summer flounder stock status, and, therefore, would likely result in overfishing, which would be inconsistent with the FMP, National Standard 1 guidance under the Magnuson-Stevens Act, and the most recent advice of the Council's SSC. Because these alternatives are inconsistent with the purpose and need of this action, they are not considered further under this analysis.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 7, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2016-27410 Filed: 11/14/2016 8:45 am; Publication Date: 11/15/2016]